



February 26, 1999

Captain Robert Taylor
Amarillo Police Department
200 Southeast Third Avenue
Amarillo, Texas 79101-1514

OR99-0566

Dear Captain Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122495.

The Amarillo Police Department (the "department") received requests for incident report numbers 94-21782, 92-67447 and 92-100937.¹ You have supplied incident report numbers 92-67447 and 92-100937. You indicate that you will release incident report 94-21782. You assert that incident report number 92-67447 is excepted from disclosure by section 552.108 of the Government Code. We have considered the exceptions pertinent to the subject information and have reviewed the documents at issue.

Information is excepted from disclosure by Government Code section 552.101 "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Release of confidential information is prohibited. Government Code section 552.352. Because release of confidential information constitutes a misdemeanor, the attorney general will raise section 552.101 on behalf of a governmental body, although the attorney general will ordinarily not raise an exception that a governmental body has not claimed. Open Records Decision 455 at 3 (1987). In this case, release of requested information implicates section 261.201 of the Family Code. This provision governs release of information related to reports of child abuse or neglect. In pertinent part it reads:

¹We note that the request for incident report number 94-100937 was made by telephone. Ordinarily only written requests invoke the requirements of the Open Records Act, however we deem this request as a supplement to the written request submitted earlier by this requestor and address it accordingly.

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We are of the opinion that incident report 94-100937 consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code and is therefore confidential by statute. As you have not cited any specific rule that the department has adopted with regard to the release of this type of information, these records are presumed confidential in their entirety. *See* Open Records Decision No. 440 at 2 (1986). Accordingly, the department must not release this requested information.

You assert that Section 552.108 of the Government Code excepts incident number 92-67447. In pertinent part this statute reads:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.


Subsection (a)(2) excepts certain information related to cases that have concluded. You state that this requested report relates to an investigation that concluded without prosecution.

Therefore, we conclude that you have met the requirements of section 552.108(a)(2) and this information may be withheld.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest, even if this information is not actually located on the front page of the offense report. In Open Records Decision No. 127 (1976), this office summarized the front page information of an offense report. Although section 552.108(a)(2) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "MJ Burns", followed by a horizontal line.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref:: ID# 122495

Enclosures: Submitted documents

cc: Ms. Barbara Andresen
2220 Front Blvd.
Amarillo, Texas 79106
(w/o enclosures)